

Appendix.

JURISDICTION OF PETITION FOR WRIT OF CERTIORARI.

United States Code, 1940 Edition, Title 11, Section 47(e):

The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia in proceedings under this title in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted. (July 1, 1898, ch. 541, § 24, 30 Stat. 553; Feb. 13, 1925, ch. 229, §§ 1, 5, 13, 43 Stat. 936, 939, 941; May 27, 1926, ch. 406, § 9, 44 Stat. 664; June 7, 1934, ch. 426, 48 Stat. 926; June 22, 1938, ch. 575, § 1, 52 Stat. 854.)

Judicial Code, Section 240, United States Code, 1940 Edition, Title 28, Section 347 (a):

In any case, civil or criminal, in a circuit court of appeals, or in the United States Court of Appeals for the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted appeal. (Mar. 3, 1911, ch. 231, § 240, 36 Stat. 1157; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 938; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 926.)

Pertinent Sections of the Chandler Act.

Sections 256 and 257 (United States Code, 1940 Edition, Title 11, Sections 656 and 657):

§ 256. A petition may be filed under this chapter notwithstanding the pendency of a prior mortgage foreclosure, equity, or other proceeding in a court of the United States or of any State in which a receiver or trustee of all or any part of the property of a debtor has been appointed or for whose appointment an application has been made. (July 1, 1898, ch. 541, § 256, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

§ 657. The trustee appointed under this chapter, upon his qualification, or if a debtor is continued in possession, the debtor, shall become vested with the rights, if any, of such prior receiver or trustee in such property and with the right to the immediate possession thereof. The trustee or debtor in possession shall also have the right to immediate possession of all property of the debtor in the possession of a trustee under a trust deed or a mortgagee under a mortgage. (July 1, 1898, ch. 541, § 257, as added June 22, 1938, ch. 575, § 1, 52 Stat. 902.)

Sections 111 to 116 (United States Code, 1940 Edition, Title 11, Sections 511 to 516):

§ 511. Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located. (July 1, 1898, ch. 541, § 111, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

§ 512. Prior to the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers, where not inconsistent with the provisions of this chapter,

shall be the same as in a bankruptcy proceeding before adjudication. (July 1, 1898, ch. 541, § 112, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

§ 513. Prior to the approval of a petition, the judge may upon cause shown grant a temporary stay, until the petition is approved or dismissed, of a prior pending bankruptcy, mortgage foreclosure or equity receivership proceeding and of any act or other proceeding to enforce a lien against a debtor's property, and may upon cause shown enjoin or stay until the petition is approved or dismissed the commencement or continuation of a suit against a debtor. (July 1, 1898, ch. 541, § 113, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

§ 514. Upon the approval of a petition, the jurisdiction, powers, and duties of the court and of its officers, where not inconsistent with the provisions of this chapter, shall be the same as in a bankruptcy proceeding upon adjudication. (July 1, 1898, ch. 541, § 114, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

§ 515. Upon the approval of a petition, the court shall have and may, in addition to the jurisdiction, powers and duties hereinabove and elsewhere in this chapter conferred and imposed upon it, exercise all the powers, not inconsistent with the provisions of this chapter, which a court of the United States would have if it had appointed a receiver in equity of the property of the debtor on the ground of insolvency or inability to meet its debts as they mature. (July 1, 1898, ch. 541, § 115, as added June 22, 1938, ch. 575, § 1, 52 Stat. 884.)

§ 516. Upon the approval of a petition, the judge may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon him and the court—(1) permit the rejection of executory contracts of the debtor, except contracts in the public authority, upon notice to the parties to such contracts and

to such other parties in interest as the judge may designate; (2) authorize a receiver, trustee, or debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to issue certificates of indebtedness for cash, property, or other consideration approved by the judge, upon such terms and conditions and with such security and priority in payment over existing obligations, secured or unsecured, as in the particular case may be equitable; (3) authorize a receiver or a trustee or a debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the judge may approve; and (4) in addition to the relief provided by section 29 of this title, enjoin or stay until final decree the commencement or continuation of a suit against the debtor or its trustee or any act or proceeding to enforce a lien upon the property of the debtor. (July 1, 1898, ch. 541, § 116, as added June 22, 1938, ch. 575, § 1, 52 Stat. 885.)

Section 148 (United States Code, 1940 Edition, Title 11, Section 548):

Until otherwise ordered by the judge, an order approving a petition shall operate as a stay of a prior pending bankruptcy mortgage foreclosure, or equity receivership proceeding, and of any act or other proceeding to enforce a lien against the debtor's property. (July 1, 1898, ch. 541, § 148, as added June 22, 1938, ch. 575, § 1, 52 Stat. 888.)

Sections 186 and 187 (United States Code, 1940 Edition, Title 11, Sections 586 and 587):

§ 186. A trustee, upon his appointment and qualification, shall be vested with such title as a trustee appointed under

section 72 of this title would have. (July 1, 1898, ch. 541, § 186, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

§ 587. Where not inconsistent with the provisions of this chapter, a trustee, upon his appointment and qualification, shall be vested with the same rights, be subject to the same duties, and exercise the same powers as a trustee appointed under section 72 of this title, and if authorized by the judge, shall have and may exercise such additional rights and powers as a receiver in equity would have if appointed by a court of the United States for the property of the debtor. (July 1, 1898, ch. 541, § 187, as added June 22, 1938, ch. 575, § 1, 52 Stat. 892.)

Pertinent Massachusetts Statutes.

General Laws, Tercentenary Edition, Chapter 244, Section 1:

A mortgagee may, after breach of condition of a mortgage of land, recover possession of the land mortgaged by an open and peaceable entry thereon, if not opposed by the mortgagor or other person claiming it, or by action under this chapter; and possession so obtained, if continued peaceably for three years, shall forever foreclose the right of redemption. (1785, 22, § 2; R.S. 107, § 1; G.S. 140, § 1; P.S. 181, § 1; R.L. 187, § 1.)

General Laws, Tercentenary Edition, Chapter 244, Section 2:

If an entry for breach of condition is made without a judgment, a memorandum of the entry shall be made on the mortgage deed and signed by the mortgagor or person claiming under him, or a certificate under oath of two competent witnesses to prove the entry shall be made. Such memorandum or certificate shall within thirty days

after the entry, except as provided in section seventy of chapter one hundred and eighty-five, be recorded in the registry of deeds for the county or district where the land lies, with a note of reference, if the mortgage is recorded in the same registry, from each record to the other. Unless such record is made, the entry shall not be effectual for the purposes mentioned in the preceding section. (R.S. 107, § 2; G.S. 140, § 2; P.S. 181, § 2; R.L. 187, § 2.)

General Laws, Tercentenary Edition, Chapter 244, Section 3:

The mortgagee in an action for possession may declare on his own seisin, stating that it is in mortgage; and if the court finds upon verdict or otherwise that the plaintiff is entitled to possession of the land for breach of condition, it shall upon motion of either party, except as provided in the following section, award a conditional judgment. (1698, 22, § 1; 1785, 22, § 1; R.S. 107, § 3; 1852, 312, § 2, cl. 10; G.S. 140, § 3; P.S. 181, § 3; R.L. 187, § 3.)

General Laws, Tercentenary Edition, Chapter 244, Section 4:

Unless the defendant is the mortgagor or his assignee, or entitled to hold or claim the land under the mortgagor or his assignee, he shall not redeem the land nor have a conditional judgment, except with the consent of the plaintiff, but the action shall be conducted like a writ of entry, and in all cases the judgment for the plaintiff may be entered for possession as at common law, unless one or the other of the parties moves for the conditional judgment. (R.S. 107, § 4; G.S. 140, § 4; P.S. 181, § 4; R.L. 187, § 4.)

General Laws, Tercentenary Edition, Chapter 244, Section 5:

If the conditional judgment is to be entered, the court shall determine the amount due to the plaintiff on the mortgage, and shall enter judgment that if the defendant within two months after the judgment pays to the plaintiff such amount with interest and the costs, the mortgage shall be void, and the defendant shall hold the land discharged thereof; otherwise, that the plaintiff shall have execution for possession and for costs. (1698, 22, § 1; 1785, 22, § 1; R.S. 107, § 5; G.S. 140, § 5; P.S. 181, § 5; R.L. 187, § 5.)

General Laws, Tercentenary Edition, Chapter 244, Section 14:

The mortgagee or person having his estate in the land mortgaged, or a person authorized by the power of sale, or the attorney duly authorized by a writing under seal, or the legal guardian or conservator of such mortgagee or person acting in the name of such mortgagee or person, may, upon breach of condition and without action, do all the acts authorized or required by the power; but no sale under such power shall be effectual to foreclose a mortgage, unless previous to such sale, notice thereof has been published once in each of three successive weeks, the first publication to be not less than twenty-one days before the day of sale, in a newspaper, if any, published in the town where the land lies. If no newspaper is published in such town, notice may be published in a newspaper published in the county where the land lies, and this provision shall be implied in every power of sale mortgage in which it is not expressly set forth. A newspaper which by its title page purports to be printed or published in such town, city or county, and having a circulation therein, shall be sufficient for the purpose. (1857, 229, § 1; G.S. 140, § 42; 1877, 215;

P.S. 181, § 17; 1882, 75; R.L. 187, § 14; 1906, 219, § 1; 1912, 360, § 1; 1918, 257, § 439; 1919, 5; 1920, 2.)

General Laws, Tercentenary Edition, Chapter 244, Section 15:

The person selling, or the attorney duly authorized by a writing under seal, or the legal guardian or conservator of such person, shall, within thirty days after the sale, cause a copy of the notice and his affidavit, fully and particularly stating his acts, or the acts of his principal or ward, to be recorded in the registry of deeds for the county or district where the land lies, with a note of reference thereto on the margin of the record of the mortgage deed, if it is recorded in the same registry. If the affidavit shows that the requirements of the power of sale and of the statute have in all respects been complied with, the affidavit or a certified copy of the record thereof, shall be admitted as evidence that the power of sale was duly executed. (1857, 229, § 1; G.S. 140, §§ 42, 43; P.S. 181, § 18; R.L. 187, § 15; 1906, 219, § 2; 1915, 23.)

General Laws, Tercentenary Edition, Chapter 244, Section 17:

A sale or transfer by the mortgagor shall not impair or annul any right or power of attorney given in the mortgage to the mortgagee to sell or transfer the land as attorney or agent of the mortgagor. (G.S. 140, § 39; P.S. 181, § 20; R.L. 187, § 17.)